



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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IN REPLY PLEASE

REFER TO FILE: **EP-4**

November 4, 2004

TO: Each Supervisor

FROM: Donald L. Wolfe
Interim Director of Public Works

NU-WAY LIVE OAK LANDFILL AND WASTE MANAGEMENT, INC. UNDERPAYMENT OF SOLID WASTE MANAGEMENT FEES

Nu-Way Live Oak Landfill is an inert waste disposal facility located on a former sand and gravel quarry in the City of Irwindale. Waste Management, Inc., is the Landfill's owner/operator. The County's Solid Waste Management Fee is authorized in Los Angeles County Code, Chapter 20.88, and is imposed each month on all solid waste disposed in the County of Los Angeles or exported out of the County for disposal. The fee is 86¢ per ton of waste disposed or 52¢ per cubic yard of waste if the Director of Public Works determines that tonnage cannot be measured. On June 12, 2003, Public Works concluded an audit of Nu-Way's records documenting payments of the County's Solid Waste Management Fee. The audit determined that Nu-Way has been underreporting the quantities of waste disposed at their facility since 1997 and consequently has significantly underpaid the fee. The underpayment referred to in the audit totals more than \$4 million. In addition, delinquent fees are subject to penalties and significant penalty amounts have accrued and continue to accumulate.

The audit findings were reported to Waste Management, Inc., at the time, and Public Works and the Office of County Counsel have been trying to work with Waste Management, Inc., to resolve the issues arising from the audit and to recover the underpayments and penalties owed. Earlier this year, Waste Management, Inc., proposed to the County that the matter be submitted for mediation. Public Works and County Counsel agreed to this proposal as we were and remain confident of the merits of our position. County Counsel hired an independent law firm, Parker, Milliken, Clark, O'Hara & Samuelian (PMCOS), to assist our efforts. A mutually acceptable mediator was selected, the Honorable William A. Masterson, who is a retired California Appellate

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Court Justice. A mediation hearing was conducted on October 25, 2004. Staff from Public Works, County Counsel, and PMCOS represented the County at the mediation.

Despite our best efforts and those of Justice Masterson at the mediation hearing, we were unable to arrive at a resolution with Waste Management, Inc., for the underpaid fees and accumulated penalties owed for its Nu-Way facility. Waste Management, Inc., has taken the position that it is not required to pay any Solid Waste Management Fees for the Nu-Way facility and that, as a mine reclamation site, Nu-Way is not a disposal facility. Waste Management, Inc., has also argued that even if Nu-Way is a disposal facility, not all of the materials deposited at the site are subject to the Solid Waste Management Fee. These positions are contrary to State law and County Code.

As a result, we plan to issue an enforcement order to Nu-Way Live Oak Landfill, pursuant to Los Angeles County Code, Chapter 20.88, for unpaid Solid Waste Management Fees and accumulated penalties. Chapter 20.88 provides for an administrative appeal of the enforcement order to a hearing officer whose decision is final unless it is appealed to the Superior Court.

Shari Afshari, Assistant Deputy Director of Environmental Programs Division, is available to answer any questions you may have regarding this situation, and I have directed her to keep you posted as events warrant. Ms. Afshari can be reached at (626) 458-3500, Monday through Thursday, between 7 a.m. to 5:30 p.m.

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cc: Chief Administrative Office
County Counsel (Judith Fries, Fred Pfaeffle)
Executive Office